

1 AN ACT concerning health.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental  
5 Disabilities Code is amended by changing Section 3-400 as  
6 follows:

7 (405 ILCS 5/3-400) (from Ch. 91 1/2, par. 3-400)

8 Sec. 3-400. Voluntary admission to mental health facility.

9 Any person 16 or older, including a person adjudicated a  
10 disabled person, may be admitted to a mental health facility as  
11 a voluntary recipient for treatment of a mental illness upon  
12 the filing of an application with the facility director of the  
13 facility if the facility director determines and documents in  
14 the recipient's medical record that the person (i) is  
15 clinically suitable for admission as a voluntary recipient and  
16 (ii) has the capacity to consent to voluntary admission. For  
17 purposes of consenting to voluntary admission, a person has the  
18 capacity to consent to voluntary admission if he or she  
19 understands all of the following:

20 (1) She or he is being admitted to a mental health  
21 facility.

22 (2) If he or she requests discharge from the facility  
23 pursuant to Section 3-403, his or her request must be in

1 writing.

2 (3) Following a written request for discharge from the  
3 facility, his or her discharge is not automatic.

4 (4) Within 5 business days after receipt of the written  
5 request for discharge from the facility, the facility must  
6 either discharge the person or initiate commitment  
7 proceedings against the person.

8 (5) If the person does not request discharge from the  
9 facility, he or she may be confined for up to 30 days  
10 pursuant to Section 3-404. ~~deems such person clinically~~  
11 ~~suitable for admission as a voluntary recipient.~~

12 (Source: P.A. 91-726, eff. 6-2-00.)

13 Section 10. The Probate Act of 1975 is amended by changing  
14 Section 11a-17 as follows:

15 (755 ILCS 5/11a-17) (from Ch. 110 1/2, par. 11a-17)

16 Sec. 11a-17. Duties of personal guardian.

17 (a) To the extent ordered by the court and under the  
18 direction of the court, the guardian of the person shall have  
19 custody of the ward and the ward's minor and adult dependent  
20 children and shall procure for them and shall make provision  
21 for their support, care, comfort, health, education and  
22 maintenance, and professional services as are appropriate, but  
23 the ward's spouse may not be deprived of the custody and  
24 education of the ward's minor and adult dependent children,

1 without the consent of the spouse, unless the court finds that  
2 the spouse is not a fit and competent person to have that  
3 custody and education. The guardian shall assist the ward in  
4 the development of maximum self-reliance and independence. The  
5 guardian of the person may petition the court for an order  
6 directing the guardian of the estate to pay an amount  
7 periodically for the provision of the services specified by the  
8 court order. If the ward's estate is insufficient to provide  
9 for education and the guardian of the ward's person fails to  
10 provide education, the court may award the custody of the ward  
11 to some other person for the purpose of providing education. If  
12 a person makes a settlement upon or provision for the support  
13 or education of a ward, the court may make an order for the  
14 visitation of the ward by the person making the settlement or  
15 provision as the court deems proper. A guardian of the person  
16 may not admit a ward to a mental health facility except at the  
17 ward's request as provided in Article IV of the Mental Health  
18 and Developmental Disabilities Code and unless the ward has the  
19 capacity to consent to such admission as provided in Article IV  
20 of the Mental Health and Developmental Disabilities Code.

21 (a-5) If the ward filed a petition for dissolution of  
22 marriage under the Illinois Marriage and Dissolution of  
23 Marriage Act before the ward was adjudicated a disabled person  
24 under this Article, the guardian of the ward's person and  
25 estate may maintain that action for dissolution of marriage on  
26 behalf of the ward.

1 (b) If the court directs, the guardian of the person shall  
2 file with the court at intervals indicated by the court, a  
3 report that shall state briefly: (1) the current mental,  
4 physical, and social condition of the ward and the ward's minor  
5 and adult dependent children; (2) their present living  
6 arrangement, and a description and the address of every  
7 residence where they lived during the reporting period and the  
8 length of stay at each place; (3) a summary of the medical,  
9 educational, vocational, and other professional services given  
10 to them; (4) a resume of the guardian's visits with and  
11 activities on behalf of the ward and the ward's minor and adult  
12 dependent children; (5) a recommendation as to the need for  
13 continued guardianship; (6) any other information requested by  
14 the court or useful in the opinion of the guardian. The Office  
15 of the State Guardian shall assist the guardian in filing the  
16 report when requested by the guardian. The court may take such  
17 action as it deems appropriate pursuant to the report.

18 (c) Absent court order pursuant to the Illinois Power of  
19 Attorney Act directing a guardian to exercise powers of the  
20 principal under an agency that survives disability, the  
21 guardian has no power, duty, or liability with respect to any  
22 personal or health care matters covered by the agency. This  
23 subsection (c) applies to all agencies, whenever and wherever  
24 executed.

25 (d) A guardian acting as a surrogate decision maker under  
26 the Health Care Surrogate Act shall have all the rights of a

1 surrogate under that Act without court order including the  
2 right to make medical treatment decisions such as decisions to  
3 forgo or withdraw life-sustaining treatment. Any decisions by  
4 the guardian to forgo or withdraw life-sustaining treatment  
5 that are not authorized under the Health Care Surrogate Act  
6 shall require a court order. Nothing in this Section shall  
7 prevent an agent acting under a power of attorney for health  
8 care from exercising his or her authority under the Illinois  
9 Power of Attorney Act without further court order, unless a  
10 court has acted under Section 2-10 of the Illinois Power of  
11 Attorney Act. If a guardian is also a health care agent for the  
12 ward under a valid power of attorney for health care, the  
13 guardian acting as agent may execute his or her authority under  
14 that act without further court order.

15 (e) Decisions made by a guardian on behalf of a ward shall  
16 be made in accordance with the following standards for decision  
17 making. Decisions made by a guardian on behalf of a ward may be  
18 made by conforming as closely as possible to what the ward, if  
19 competent, would have done or intended under the circumstances,  
20 taking into account evidence that includes, but is not limited  
21 to, the ward's personal, philosophical, religious and moral  
22 beliefs, and ethical values relative to the decision to be made  
23 by the guardian. Where possible, the guardian shall determine  
24 how the ward would have made a decision based on the ward's  
25 previously expressed preferences, and make decisions in  
26 accordance with the preferences of the ward. If the ward's

1 wishes are unknown and remain unknown after reasonable efforts  
2 to discern them, the decision shall be made on the basis of the  
3 ward's best interests as determined by the guardian. In  
4 determining the ward's best interests, the guardian shall weigh  
5 the reason for and nature of the proposed action, the benefit  
6 or necessity of the action, the possible risks and other  
7 consequences of the proposed action, and any available  
8 alternatives and their risks, consequences and benefits, and  
9 shall take into account any other information, including the  
10 views of family and friends, that the guardian believes the  
11 ward would have considered if able to act for herself or  
12 himself.

13 (f) Upon petition by any interested person (including the  
14 standby or short-term guardian), with such notice to interested  
15 persons as the court directs and a finding by the court that it  
16 is in the best interest of the disabled person, the court may  
17 terminate or limit the authority of a standby or short-term  
18 guardian or may enter such other orders as the court deems  
19 necessary to provide for the best interest of the disabled  
20 person. The petition for termination or limitation of the  
21 authority of a standby or short-term guardian may, but need  
22 not, be combined with a petition to have another guardian  
23 appointed for the disabled person.

24 (Source: P.A. 90-250, eff. 7-29-97; 90-796, eff. 12-15-98;  
25 91-139, eff. 1-1-00.)